

EXHIBIT 21

1 IN THE UNITED STATES DISTRICT COURT
 2 IN AND FOR THE DISTRICT OF DELAWARE
 3
 4 APPLE INC.,)
 5 -----Plaintiff,)
 6 vs.) Case No.
 7 MASIMO CORP, et al.,) 22-1377-MN-JLH
 8 -----Defendant.) 22-1378-MN-JLH

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 10 TRANSCRIPT OF DISCOVERY CONFERENCE
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13 DISCOVERY CONFERENCE had before the
 14 Honorable Jennifer L. Hall, U.S.M.J., in
 15 Courtroom 2B on the 3rd of August, 2023.

16 APPEARANCES
 17

POTTER ANDERSON & CORROON LLP
 BY: DAVID MOORE, ESQ.

-and-

20 WILMER CUTLER PICKERING HALE AND DORR LLP
 BY: JENNIFER MILICI, ESQ.
 21 MARK FORD, ESQ.
 LYDIA TURNAGE, ESQ.

-and-

23 DESMARAIS LLP
 BY: JEFF SEDDON, ESQ.
 BEN LUEHRS, ESQ.

24 Counsel for Plaintiff

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1 (Appearances continued.)

2 PHILLIPS MCLAUGHLIN & HALL P.A.
 3 BY: MEGAN HANEY, ESQ.

4 -and-

5 KNOBBE MARTENS
 BY: STEPHEN LARSON, ESQ.

6 Counsel for Defendant

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1 THE COURT: All right. So we're here
 2 for some discovery disputes. Why don't we have
 3 folks make their appearances for the record
 4 MR. MOORE: Good morning, Your Honor.
 5 David Moore from Potter Anderson on behalf of
 6 Apple. I'm joined by co-counsel from Wilmer
 7 Hale Jennifer Milici, Mark Ford, and Lydia
 8 Turnage. Also joined by Jeff Seddon and Ben
 9 Luehrs from Desmarais, and also Natalie Pous
 10 and Jack Pararas from Apple.

11 THE COURT: Hi. Good morning,
 12 everybody.

13 They've got you out numbered today.

14 MS. HANEY: Yes, Your Honor. Good
 15 morning. Megan Haney from Phillips,
 16 McLaughlin, and Hall, and I'm joined today by
 17 Steve Larson from Knobbe.

18 THE COURT: Good morning.

19 Well, I've got a giant stack of discovery
 20 disputes in front of me. I can tell you we've
 21 looked them over closely. One thing I will say
 22 is this: You probably have a better
 23 recollection of everything that's happened in
 24 this courtroom than I do because I know, and I
 25 can tell the way this case has been going, you

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 1 guys have been spending a lot of time on it.
 2 I've got to tell you I've got hundreds of other
 3 cases. You may have to remind me of
 4 allegations and things that happened. We had a
 5 lot going on in the courthouse this month, as
 6 you all know.

7 So let's start with the dispute that I
 8 read first, which is Apple's first dispute, and
 9 it talks about Masimo allegedly withholding
 10 evidence related to antitrust.

11 MR. FORD: Good morning, Your Honor.
 12 Mark Ford. I've been here a few times. First
 13 time I get to talk, which is nice.

14 So, Your Honor, this is the first of two
 15 disputes that Apple brings. It relates to the
 16 Walker Process damages. And, frankly, this is
 17 about whether Apple gets any meaningful
 18 discovery at all into what may be the only
 19 claim of damages Masimo brings.

20 Imagine a plaintiff saying you cost me
 21 tens of millions of dollar because I had to
 22 hire a contractor, but I'm not going to give
 23 you the details and underlying invoices for
 24 what I paid for that would allow you to test
 25 that or substantiate whether what I'm paying

1 additional meet-and-confer on this issue?
 2 MR. LARSON: Potentially. We're
 3 having a meet-and-confer about the search
 4 terms, of course, in general about the burden
 5 and how many hits they are. I think a document
 6 sufficient to show would make us more
 7 comfortable. We could talk to the executives,
 8 try figure out what the factors are and provide
 9 some category of documents. Our only concern
 10 is to make sure we agree to produce all
 11 documents, that we know what we're searching
 12 for and looking for.

13 THE COURT: Why don't you
 14 meet-and-confer on that. I'm not going to say
 15 documents sufficient to show is enough at this
 16 point, because I have no idea what exists, and
 17 sounds like you don't either.

18 So they're not refusing to produce those.
 19 Those are going to move forward in the ordinary
 20 course, and you all are going to meet about
 21 burden, and that's subjects to any future
 22 rulings under Rule 26.

23 So I think that's the first set of
 24 disputes, so let's move on.

10:34AM 25 So now we've got Masimo's disputes. So

1 let me get those pulled up. These are the
 2 disputes, also, about the antitrust
 3 counterclaims. Let's take these one by one.
 4 Go ahead, Counsel.

10:34AM 5 MR. LARSON: Thank you, Your Honor.
 6 So I'll begin with the first section of
 7 our letter, and this is where we're requesting
 8 the Court's assistance, just to begin with,
 9 before we get into particular document
 10 requests, and we want clarity that there's no
 11 general embargo on predatory infringement
 12 discovery or IOS discovery. The reason this is
 13 important is Apple says they're not going to
 14 answer 'rogs, they're not going to supplement
 15 their initial disclosures, they're not going to
 16 provide pretrial disclosures. They've asked us
 17 to not provide expert discovery on this and
 18 have expert reports on this.

19 And really, the argument has to do with
 20 discovery-type arguments. They're really about
 21 the Court's report and recommendation, and we
 22 don't view the Court's report and
 23 recommendation as saying that it was going to
 24 blatantly embargo discovery on those issues.
 10:35AM 25 We read it as saying the Court will consider

1 individual requests as they came up.

2 So there's been a lot of --

3 THE COURT: Let's talk about the
 4 predatory infringement request for production.
 5 It was very helpful that you attached as
 6 Exhibit 1 a summary of what's going on here.
 7 So which ones are the predatory
 8 infringement?

9 MR. LARSON: Predatory infringement
 10 is the next section of the letter. That's 83
 11 to 84 and 86 to 90.

12 THE COURT: 83 talks about all
 13 documents and communications referencing,
 14 relating to, or discussing the practice of
 15 efficient infringement for the practice of
 16 infringing and appropriating intellectual
 17 property even after being informed of such
 18 conduct because it is more advantageous to do
 19 so that to pay for lawful use or draw up the
 20 intellectual property.

21 That request is going to be denied as not
 22 proportional to the needs of the case.

23 What's the next one?

24 MR. LARSON: That's 83, Your Honor.
 10:36AM 25 THE COURT: Yes.

1 MR. LARSON: The next one is 84.
 2 THE COURT: 84. All communications
 3 with third parties related to allegations that
 4 Apple unlawfully acquired or used intellectual
 5 property. Merit two responsive documents
 6 regarding -- this sounds like a trade secrets
 7 dispute that you had with them; right? Is this
 8 something different?

9 MR. LARSON: This is something
 10 different. I think what's important here, the
 11 point I wanted to make on some of these
 12 requests, and for a number of these requests,
 13 is we saw Apple argue in its motion to dismiss,
 14 and we're going to see Apple argue again on the
 15 motion for summary judgment, say, "Masimo,
 16 you've only shown harm to yourself. You
 17 haven't shown harm to competition." So Apple
 18 is saying, "We'll provide these documents as to
 19 you, Masimo, but we're not going to provide
 20 discovery as to this practice as regards other
 21 parties," which is what we need to show or want
 22 to show harm to competition.

23 So I think just for a little bit of
 24 perspective here, we did take Your Honor's
 10:37AM 25 ruling into account, and I think Apple has

1 seasoned counsel that I think can confirm that
 2 the discovery we're seeking here is really a
 3 drop in the bucket to what you typically have
 4 in big antitrust cases. It's very expensive
 5 and burdensome discovery.

6 THE COURT: I understand.

7 MR. LARSON: It's really focused on
 8 the facts of what actually occurred, is what
 9 we're seeking with these requests. And I'm
 10 hoping this will be our main, only discovery
 11 dispute about antitrust discovery. These are
 12 the requests that we brought to the Court that
 13 we feel we need to be able to develop that part
 14 of the case.

10:37AM 15 THE COURT: Okay. 84 is also denied.
 16 What's the next one?

17 MR. LARSON: 86.

18 THE COURT: 86. Denied.

19 MR. LARSON: Can I ask for
 20 clarification on that?

21 THE COURT: That's denied pursuant to
 22 Rule 26. It's not proportional to the needs of
 23 the case.

24 MR. LARSON: That answered my
 25 question. So it's not a blanket embargo for

1 extent that's true, we believe it's because of
 2 the conduct that Apple engaged in.

3 THE COURT: I understand the
 4 argument, but that one is also denied. I
 5 appreciate your argument.

6 MR. LARSON: Understood.

7 Next one is 90.

8 THE COURT: Denied.

9 MR. LARSON: And next one is -- I
 10 believe that's --

11 THE COURT: Predatory infringement.
 12 MR. LARSON: Predatory infringement.
 13 THE COURT: Okay. Monopoly
 14 leveraging.

15 So I'm confused about 62. I'll be honest
 16 with you. It's about -- I thought the market
 17 you wanted was the market for IOS app
 18 distribution. Am I a moron? Isn't that a high
 19 percent? Don't they have a monopoly on that
 20 market? Is there something I'm not getting?
 21 What am I missing out on?

22 MR. LARSON: What they're going to
 23 argue is that's not about the market. They're
 24 going to say that it should be a broader
 25 market, and this really goes to the ecosystem

1 predatory infringement discovery?

2 THE COURT: These particular requests
 3 are denied.

4 MR. LARSON: Thank you, Your Honor.
 5 Next one is 87.

6 THE COURT: Denied.

7 MR. LARSON: Next one is 88.

8 THE COURT: Denied.

9 MR. LARSON: 89. And can I offer a
 10 little bit of argument on this one.

11 THE COURT: That's fine.

12 MR. LARSON: Again, you see here,
 13 we're referring to specific parties, and these
 14 are parties that I mentioned in our complaint
 15 that we believe Apple engaged in the practice
 16 of predatory infringement with regarding these
 17 parties. And again, Apple is going to argue
 18 we're only showing harm in competition to
 19 ourselves and not these other parties. This is
 20 the the type of discovery that we would seek to
 21 be able that establish that. I don't see
 22 arguments about burden or proportionality.

23 It's really just about relevance, and what
 24 Apple argues about these parties is these
 25 parties aren't in the relevant market. To the

1 request, so I'll go back on that. That's
 2 request 112 and 114.

3 This set of requests have to do with
 4 Apple's conduct in that market, and so
 5 request -- the question of whether that is a
 6 market, 112 and 114, we'll get to that in a
 7 second unless you want to go ahead and address
 8 that. These are less about what that market is
 9 and more about the conduct in that market,
 10 showing that Apple has monopoly power in the
 11 market. And Apple hasn't conceded that. If
 12 Apple were to say that's not an issue here,
 13 that would be fine, but barring that, it's
 14 something that we need to pursue.

15 THE COURT: Okay. All right. So
 16 what is it -- give me the type of idea of the
 17 type of thing you're looking for in -- you want
 18 to talk about 112 first? We can talk about 112
 19 first.

20 So 112 has to do with documents and
 21 things referring to Apple Watch and Apple's
 22 ecosystem with interconnected products, and
 23 they don't what to produce that. No, they're
 24 happy to produce that. They just don't want to
 25 talk about stuff that doesn't have to do with